



SAN BERNARDINO COUNTY

RETIREMENT MEDICAL TRUST PLAN

Established June 1, 1998
Amended January 27, 2004

TABLE OF CONTENTS

	Page Number
ARTICLE I	ESTABLISHMENT AND PURPOSE OF PLAN..... 1
ARTICLE II	DEFINITIONS 1
ARTICLE III	ADMINISTRATION 5
ARTICLE IV	PARTICIPATION 6
ARTICLE V	CONTRIBUTIONS 6
ARTICLE VI	PARTICIPANT'S ACCOUNT 8
ARTICLE VII	DISTRIBUTION OF BENEFITS 9
ARTICLE VIII	ADMINISTRATIVE COSTS 11
ARTICLE IX	TERMINATION OR AMENDMENT..... 11
ARTICLE X	MISCELLANEOUS 11
ARTICLE XI	PROVISION OF PROTECTED HEALTH INFORMATION TO EMPLOYER..... 12

SAN BERNARDINO COUNTY RETIREMENT MEDICAL TRUST PLAN

ARTICLE I - ESTABLISHMENT AND PURPOSE OF PLAN

Pursuant to the terms and conditions of the San Bernardino County Retirement Medical Trust (the Trust) to provide certain benefit payments for eligible retired employees of San Bernardino County (County), the County, the San Bernardino Public Employees Association (SBPEA), and the San Bernardino County Safety Employees' Benefit Association (SEBA) hereby amend the plan known as the San Bernardino County Retirement Medical Trust Plan (Plan). The terms of this Plan are subject to and governed by the Trust. The Trust and the Plan are collectively referred to as the VEBA [Voluntary Employees' Beneficiary Association within the meaning of Internal Revenue Code Section 501(c)(9)]. The purpose of the VEBA is to allow Contributions to be made by the County to the Trust for the benefit of an Eligible Employee, free of tax, to be used for the reimbursement or payment of Qualified Medical Expenses when an Eligible Employee has separated from County service for reasons other than a disability retirement and has reached Normal Retirement Age as defined by the Plan.

ARTICLE II – DEFINITIONS

The following words or phrases shall have the meanings specified below for the purpose of this Plan, which shall have the same meaning as defined in the Trust.

- A. **Account.** An account established by the Plan Administrator for an Eligible Employee or Participant for receipt of deposits and/or Employer Contributions as designated in this Plan.
- B. **Active Participant.** An Eligible Employee who has separated from County service and who has satisfied the Normal Retirement Age specified in the Plan on whose behalf the County has made a Contribution to an Account established under the Plan pursuant to Article V of the Trust. Active Participants are eligible for reimbursement of Qualified Medical Expenses.
- C. **Auditor/Controller-Recorder.** The County elected official who shall be an ex-officio member of the Board (no voting rights) in charge of annually auditing the Plan and Accounts.
- D. **Beneficiary(ies).** Upon the death of a Participant, the surviving Spouse, if any, shall become his/her Beneficiary who shall be entitled to the rights and benefits under this Plan for the Spouse and any Dependent(s) of the Participant. In the event there is no Spouse, or upon the death of the surviving Spouse, the Beneficiary shall be the Participant's remaining Dependent(s), if any. If there is no surviving Spouse or Dependents of the Participant, the amounts on deposit in the Participant's Account shall become property of the Trust, which shall be used for purposes of the

Plan, including administrative expenses or funding of additional Plan Benefits, if any.

- E. **Board.** The Board of Trustees of the Trust, which administers and manages the resources of the Trust for the payment of Qualified Medical Expenses or other qualified benefits approved by the Board. The Board shall consist of nine members, consisting of the following positions: the County Administrative Officer, the Director of Human Resources, the Executive Director/Chief Investment Officer of the San Bernardino County Employees' Retirement Association, the Treasurer/Tax Collector, three members appointed by the County Administrative Officer, one member appointed by the San Bernardino Public Employees Association, and one member appointed by the Safety Employees' Benefit Association. The appointed members shall serve at the pleasure of the County Administrative Officer. The elected County Auditor/Controller-Recorder shall serve as an ex-officio member of the Board. The Board shall advise the Plan Administrator and the Board of Supervisors on all matters of policy affecting the Plan.
- F. **Code.** The Internal Revenue Code of 1986, as amended.
- G. **Contributions.** The amounts authorized by the County pursuant to the Trust that shall be deposited into Accounts as described in Article V, Contributions, of this Plan or such other amounts as shall be authorized by the County Board of Supervisors pursuant to the terms of a Memorandum of Understanding, salary ordinance or employment contract for the purpose of funding benefits under the Plan.
- H. **County.** The County of San Bernardino, California, the Employer of Eligible Employees and Participants.
- I. **Dependent(s).** The Spouse of a Participant or any child of the Participant or Spouse who is a minor or a student [within the meaning of Code Section 151 (e)(4)], any other minor child residing with the Participant and any other individual who the Plan, relying on information furnished to it by a Participant, in good faith believes is a person described in section 152(a) of the Code.
- J. **Disability Retirement.** Severance from County employment or contract due to permanent incapacity to work and through application and qualification for Disability Retirement benefits under the SBCERA Retirement Plan. Eligible Employees or Participants who are members of the Safety Management and Supervisory Unit, Management Unit, or Exempt Group who retire with a Disability Retirement under the SBCERA Retirement Plan shall not be eligible for a contribution from the County based on the cash value of their unused sick leave balances to the Trust as set forth in Article V, Section F, of this Plan. These employees receive unused sick leave in accordance with the applicable Memorandum of Understanding, County Salary Ordinance or employment contract and such funds are therefore unavailable for contribution to the Trust.
- K. **Eligible Employee.**

1. An employee of the County in the Safety Management and Supervisory Unit on or after June 6, 1998; or
2. An employee of the County in the Exempt Group or a person who receives Exempt Group benefits from the County by approval of the Board of Supervisors by way of contract or County Code provisions on or after July 3, 1999; or
3. An employee of the County in the Management Unit or a person who receives Management Unit benefits from the County by approval of the Board of Supervisors by way of contract or County Code provisions on or after December 28, 2002; or
4. Any other groups of employees who are made specifically eligible for Plan coverage through formal action of the Board of Trustees and the County Board of Supervisors; or
5. Elected officials of the County on or after July 3, 1999. Elected officials shall comprise less than ten percent (10%) of the census of Eligible Employees and Participants in the Trust.

For purposes of this term, to be an Eligible Employee, those in subsections 1 through 4 of this Section K must have contributed to the San Bernardino County Employees' Retirement Association (SBCERA) Retirement Plan or other public entity retirement plan for more than ten (10) years and shall not have withdrawn their contributions from those plans. Employees who wish to receive credit for participation in a retirement plan other than SBCERA must provide the Plan Administrator with a written statement from the retirement plan stating length of participation and that contributions have not been withdrawn. As to those persons who are an employee in the Safety Management and Supervisory Unit as of June 6, 1998, who later become an employee in the Exempt Group, their eligibility shall be governed by Section K of this paragraph I.

- L. **Employee Association.** Any collective bargaining representative employee group that has qualified to be recognized for purposes of representing County employees in the matter of participating in the Trust. Specifically, the San Bernardino County Safety Employees' Benefit Association (SEBA) is an "Employee Association" for those County employees who are members of the Safety Management and Supervisory Unit, and the San Bernardino Public Employees Association (SBPEA) is an "Employee Association" for those County employees who are members of the Management Unit.
- M. **Employer.** The County of San Bernardino, California.
- N. **Inactive Participant.** An Eligible Employee who has separated from County service who has not yet satisfied the Normal Retirement Age specified in the Plan on whose behalf the County has made a Contribution to an Account established under the Plan pursuant to Article V of the Trust. Inactive Participants are not eligible for reimbursement of Qualified Medical Expenses until they satisfy the Normal

Retirement Age specified in the Plan.

- O. **Investment Manager.** An investment consultant appointed by the Board to manage the investment of the Trust Fund's assets, pursuant to the directions of the Board. The Investment Manager shall be registered as such under the Investment Advisor's Act of 1940, or be a bank, as defined in such Act, or be an insurance company admitted to do business in California and qualified to manage the assets of employee benefit plans under relevant California and federal law.
- P. **Memorandum of Understanding (MOU).** The written agreement between the County as Employer and an Employee Association, if any, which sets forth the terms of employment, including types of fringe benefit plans to be provided to the employees and Contribution amounts by the Employer, employee or both.
- Q. **Normal Retirement Age.** For purposes of this plan, the Normal Retirement Age shall be 50 years for safety employees and 55 years for general employees.
- R. **Participant.** An Eligible Employee who has separated from County service for reasons other than Disability Retirement. Depending on the age of the individual, the Participant may or may not be eligible for reimbursement of Qualified Medical Expenses.
- S. **Plan.** The San Bernardino County Retirement Medical Trust Plan as described in this document.
- T. **Plan Administrator.** The person or entity designated by the Board that possesses the authority to manage the operation and administrative requirements of the Trust under the control of the Trustees. Unless such individual or entity is so designated, the Plan Administrator shall be the Board.
- U. **Plan Benefits.** The reimbursement of Qualified Medical Expenses incurred by an Active Participant, Dependent or Beneficiary under the Plan up to the total value in the applicable Account at the time the request for payment is made. All claims for Plan Benefits must be requested or directed by the Active Participant or Beneficiary on an appropriate County claim form.
- V. **Plan Year.** The Plan Year shall be the calendar year, January 1 through December 31.
- W. **Qualified Medical Expense(s).** Post-separation medical and/or dental expense(s) incurred by an Active Participant and his/her Dependent(s) or Beneficiary(ies) otherwise not reimbursed, that are defined in Code Section 213(d)(1).
- X. **Separation from Service.** The severance of an Eligible Employee's employment, elective office, or contract with the County for reasons other than Disability Retirement.

- Y. **Service Retirement.** The severance of an Eligible Employee's employment, elective service or contract with the County upon satisfying the retirement age and retirement service requirements specified in the SBCERA Retirement Plan.
- Z. **Spouse.** An individual who is legally married to a Participant within the meaning of the Internal Revenue Code at the time Qualified Medical Expenses are incurred by the Spouse or at the time of death of the Participant. For purposes of this Plan, Spouse is used interchangeably with Dependent(s).
- AA. **Trust.** The San Bernardino County Retirement Medical Trust, the trust created by the San Bernardino County Retirement Medical Trust Agreement effective June 1, 1998.
- BB. **Trust Fund.** The fund established by County Contributions to the Trust for the payment or reimbursement of Qualified Medical Expenses for Active Participants and their Dependents or Beneficiaries, invested at the direction of the Board, its designated Investment Manager, or by Participants and Beneficiaries as provided in the Trust.
- CC. **Trustee.** The Board of Trustees of the San Bernardino County Retirement Medical Trust.
- DD. **VEBA.** A tax-exempt Voluntary Employees' Beneficiary Association (VEBA), described in Code Section 501(c)(9), that provides for the payment of life sickness, accident or other benefits to its members or their Dependents. The San Bernardino Retirement Medical Trust and Plan are intended to be a VEBA within the meaning of IRS Section 501(c)(9).
- EE. **VEBA Members.** The collective set of Eligible Employees, Inactive Participants and Active Participants.

ARTICLE III - ADMINISTRATION

The Trustee shall have full authority to adopt rules and regulations for the administration of the Plan and to interpret, alter, amend, or revoke any rules and regulations so adopted. Trustee shall have full discretion to construe and interpret the terms and provisions of this Plan and all rules and regulations related thereto, which interpretation or construction shall be final and binding on all parties including, but not limited to, the County, the SBPEA, the SEBA and any Eligible Employee, Participant, or Beneficiary, except as otherwise provided by law. Trustee shall administer such terms and provisions in a uniform and nondiscriminatory manner and in full accordance with any and all laws applicable to the Plan.

ARTICLE IV - PARTICIPATION

The Retirement Medical Trust Plan is not a voluntary benefit. Those employees who satisfy the definition of an Eligible Employee must have the cash value of their unused accumulated sick leave, if any, contributed to the Trust as outlined in Article V.

In accordance with Article II, Definitions, sections B and K, an Eligible Employee shall become a Participant in the Plan once they have separated from County service for reasons other than Disability Retirement. Upon separation, Participants must submit proof to the Plan Administrator that they have not received nor requested a Disability Retirement from the SBCERA Retirement Plan. Such proof may be made by letter from the SBCERA Retirement Plan or any other means acceptable to the Plan Administrator. Upon receipt of the required proof, the County shall contribute the cash value of the unused accumulated sick leave, if any, to the Trust as outlined in Article V.

Eligible Employees separating from County service prior to Normal Retirement Age shall be considered Inactive Participants and shall not be entitled to receive Plan Benefits until they have satisfied the Normal Retirement Age. In the event an Eligible Employee dies prior to Separation from Service or Service Retirement, any Account balance held by the Trust on his or her behalf shall become property of the Trust which shall be used for purposes of the Plan including, but not limited to, administrative expenses and the funding of additional Plan Benefits, if any.

ARTICLE V - CONTRIBUTIONS

- A. **Elected Officials.** The County shall contribute one percent (1%) of an elected official's bi-weekly salary to the Trust from commencement of office or July 3, 1999, whichever occurs later, pursuant to County Code Section 13.0613(l)(4). Such Contributions shall continue until such time as the elected official leaves office or retires with a Service Retirement or Disability Retirement, whichever occurs first, or until the amount of Contribution is amended or the County terminates the Plan.
- B. **Exempt Group Employees.** Effective July 3, 1999, the County shall contribute one-half of one percent (½%) of the bi-weekly salary of an employee who is a member of the Exempt Group to the Trust upon completing ten (10) years of participation in the SBCERA Retirement Plan. The ten-year participation requirement may include time in which an Exempt Employee contributed to any public sector retirement plan(s) if he or she did not withdraw funds from said plan(s). Such Contributions shall continue until such time as the Exempt Employee Separates from Service or receives a Disability Retirement, whichever occurs first, or until the amount of Contribution is amended or the County terminates the Plan. This section B shall apply to all employees who have been granted Exempt Group benefits by the County Board of Supervisors. Upon Separation from Service and provision of required documentation as outlined in Article IV - Participation, the County shall contribute the cash value of the unused accumulated sick leave, if any, for each Eligible Employee of the Exempt Group to the Trust as follows:

Sick Leave	Cash Value Formula
001 to 399 hours	40%
400 to 600 hours	50%
601 to 800 hours	60%
801 to 1,400 hours	75%

- C. **Safety Management and Supervisory Unit Employees.** Upon Separation from Service and provision of required documentation as outlined in Article IV - Participation, the County shall contribute the cash value of the unused accumulated sick leave, if any, for each Eligible Employee of the Safety Management and Supervisory Unit to the Trust pursuant to the applicable Memorandum of Understanding, Salary Ordinance or employment contract as follows:

Sick Leave	Cash Value Formula
241 to 480 hours	35%
481 to 600 hours	40%
601 to 720 hours	45%
721 to 840 hours	50%
841 to 1,200 hours	75%

- D. **Management Unit Employees.** Upon Separation from Service and provision of required documentation as outlined in Article IV - Participation, the County shall contribute the cash value of the unused accumulated sick leave, if any, for each Eligible Employee of the Management Unit to the Trust pursuant to the applicable Memorandum of Understanding, Salary Ordinance or employment contract as follows:

Sick Leave	Cash Value Formula
001 to 480 hours	30%
481 to 600 hours	35%
601 to 720 hours	40%
721 to 840 hours	45%
841 to 1,200 hours	60%

- E. **Other Contributions.** Any Contributions made by the County on behalf of an Eligible Employee or Participant shall be in accordance with the written approval of the County Board of Supervisors and, if applicable, the Employee Association. Upon the written approval of the County Board of Supervisors, the County may make other cash Contributions to the Account of an Eligible Employee or Participant.

- F. **Disability Retirement.** No accrued cash value of sick leave shall be contributed to the Trust by the County on behalf of an Eligible Employee or Participant who is a member of the Safety Management and Supervisory Unit, Management Unit, or Exempt Group who receives a Disability Retirement. Said employees are entitled to receive up to one hundred percent (100%) of his or her unused sick leave balance, if any, up to a maximum of 1,000 hours, paid directly to them upon Separation from Service due to Disability Retirement, and such funds are therefore unavailable for

contribution to the Trust on their behalf.

ARTICLE VI - PARTICIPANT'S ACCOUNT

- A. Trustee shall maintain an Account for each Eligible Employee and Participant for deposit of Contributions made on his or her behalf by the County for the payment of Plan Benefits. Each Participant's Account shall further be credited with earnings, gains, or losses applicable thereto, less any charges for administrative costs determined by Trustee.
- B. Trustee, or Investment Manager on behalf of Trustee, may select and maintain investment options for a Participant's Account Contributions. Such investment options shall be suitable to achieve the purposes of this Plan. There shall be sufficient liquidity to pay for Qualified Medical Expenses or Plan Benefits.
 - 1. If the Participant has a choice of investment options, the Participant shall designate, in writing, his or her choice of investment options, if any, for his or her Account Contributions. If no option is selected, the Trustee or Investment Manager shall have the discretion to deposit the contribution in an investment option on behalf of Participant. The Trustee or Investment Manager shall administer the Participant's Account in accordance with Article VI, Trustee's Duties, as contained in the First Amended San Bernardino County Retirement Medical Trust Agreement.
 - 2. If the Participant has a choice of investment options, the Participant may change the total distribution of the Account between investment options or the distribution of future Contributions on a quarterly basis, upon providing written instructions to the Trust.
 - 3. Such investment deposits and all income attributable to such amounts shall be held in trust for the exclusive benefit of Participants and their Beneficiaries. All such amounts shall not be subject to the claims of the County's general creditors.
 - 4. The County and Employee Associations, if applicable, shall not be responsible for the investment performance of investment choices made by a Participant, or those made by Trustee or Investment Manager on behalf of a Participant.
 - 5. The existence of neither the Plan nor the Trust Fund shall entitle any Participant or Beneficiary, or creditor of any Participant or Beneficiary to a claim or lien against the assets of the Account. Participants and their Dependent(s) and Beneficiary(ies) shall have the exclusive right to receive the benefits payable under the Plan.
- C. The Trustee, or Investment Manager or Plan Administrator acting on behalf of the

Trustee, shall furnish to each Participant statements of his or her Account on at least an annual basis, or more often as Trustee deems appropriate. If multiple investment products are available to the Participant, the value of any available benefit shall be determined by the actual value of the investment product(s) at the time a claim for Plan Benefits is received, unaffected by any independent or arbitrary standard of calculation with respect to such investment product(s). If investment options are not available to the Participant, the value of any available benefit shall be the value of the Account as of the last day of the calendar quarter immediately proceeding the date on which a claim for Plan Benefits is received. The account statements will disclose:

1. The accumulated amounts that were invested at the beginning of the accounting period;
2. Any amounts credited to the Participant's Account by way of interest, dividends or other income from his or her Account balance during the accounting period;
3. Any amounts debited from the Participant's Account by way of fees or qualified Plan expenses;
4. Disbursements for Qualified Medical Expenses during the accounting period; and
5. The balance of such Participant's Account at the end of the accounting period.

ARTICLE VII - DISTRIBUTION OF BENEFITS

- A. Account balances shall be used to pay for Qualified Medical Expenses, as defined in Code Section 213(d), incurred by an Active Participant or the Dependent(s)/Beneficiary(ies) of an Active Participant that are not otherwise reimbursed by insurance or other means. Examples of health care expenses are listed in Publication 502 of the Internal Revenue Service, "Medical and Dental Expenses." The Plan's obligations are limited to the value of the Account including investment earnings, if any.
- B. To receive Plan Benefits, the Active Participant shall submit the appropriate County claim form along with a copy of the receipt for post-separation expenses covered under this Plan and medical certification, when required, to the Trustee, its designated Plan Administrator or third party administrator (TPA), no later than two (2) years following the date of the expense. The Trustee, Plan Administrator or TPA shall reimburse the amount of Qualified Medical Expenses, not otherwise reimbursed, to each Active Participant or Beneficiary from the Participant's Account balance not later than thirty (30) calendar days following the Trustee's, Plan Administrator's or TPA's approval of the expense item, unless more time is required

to liquidate an investment option to convert Participant's Account funds to cash, in which case the Trustee shall have a reasonable period of time to make payment.

- C. The Trustee, Plan Administrator or TPA shall determine whether an expense qualifies for reimbursement under this Plan. A denied claim may be appealed to the Trustee within sixty (60) calendar days, in writing, stating the reasons reimbursement should be approved along with additional supporting documentation, if any. Trustee or designated representative(s) shall duly consider such appealed claims and shall notify the Active Participant or the Beneficiary of the determination within thirty (30) days of receipt of the appeal. The decision of the Trustee or the designated representative(s) shall be binding on a Participant or Beneficiary.
- D. If a Participant dies while actively employed by the County and before Service Retirement, any Account balance held by the Trust on his or her behalf shall become property of the Trust which shall be used for administrative expenses or other purposes of the Trust, including funding of additional Plan Benefits, if any.
- E. Upon the death of a Participant who has Separated from Service, his or her surviving Spouse, if any, shall be entitled to the rights and benefits under the Plan for the Spouse or Dependent(s). In the event there is no Spouse, or upon the death of the surviving Spouse, the Account shall be available to pay for Plan Benefits for the Participant's Dependent(s), if any. Any person who becomes entitled to receive Plan Benefits pursuant to this section shall be deemed a Beneficiary for purposes of the Plan. If there is no surviving Spouse or Dependent(s) of the Participant, the amounts on deposit in such Account shall become the property of the Trust, which shall be used for administrative expenses, or other purposes of the Trust including funding of additional Plan Benefits, if any. The provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, P.L. 99-272 (April 7, 1986), as amended, are applicable to the Plan.

ARTICLE VIII - ADMINISTRATIVE COSTS

Trustee shall determine in a manner it deems fair and equitable the cost of investing and administering the Plan. Trustee shall allocate such costs to all Accounts in the Trust in a fair and equitable manner, and shall inform Participants at least annually of the Plan's administrative fees, if any, that are assessed to their Accounts.

ARTICLE IX - TERMINATION OR AMENDMENT

- A. The County and Employee Associations may at any time terminate the agreement to fund the Plan. In the event of such termination, all Accounts then held by the Trust shall be paid out by the Trustee, Plan Administrator or TPA as and when directed by the Trustee or the County in accordance with the provisions of Article VII, Distribution of Benefits, of this Plan. Upon such termination no further Contributions shall be made to any Account; however, investment earnings, if any, shall continue to post to each active Account until such time as an Account balance is depleted or

the Account reverts to the Trust pursuant to the relevant portions of this Plan.

- B. The provisions of this Plan may be amended to any extent and at any time by an instrument in writing signed by the Trustee provided that no amendment shall alter the purpose of this Plan and that all Participants have at least sixty (60) days notice of any amendment which directly affects participation, Accounts or the receipt of Plan Benefits, prior to the effective date of such amendment.
- C. No amendment shall authorize or permit any part of the Trust Fund to be used or diverted to purposes other than for the exclusive benefit of Participants and their Dependents and Beneficiaries.

ARTICLE X - MISCELLANEOUS

- A. It is agreed that neither the Participant, Dependent, Beneficiary nor any other designee shall have any right to commute, sell, assign, transfer or otherwise convey the right to receive any payments hereunder which payments and right thereto are expressly declared to be nonassignable and nontransferable; and, any such assignment or transfer shall not be recognized by Trustee, and if made by the Participant or Beneficiary in writing shall be deemed to constitute an immediate revocation. In the event that a Participant or Beneficiary commits or attempts to commit a prohibited act, Trustee is relieved of all liability under the Plan. Except as otherwise required by law notwithstanding this provision, any benefits paid pursuant to this Plan shall not be subject to attachment, garnishment, or execution, or to transfer by operation of law in the event of bankruptcy or insolvency.
- B. The Plan has been adopted in the State of California and shall be construed and governed in all respects under and by the laws of said state.
- C. The captions used in the Plan are for the purpose of convenience only and shall not limit, restrict or enlarge the provisions of the Plan.
- D. The Plan shall be binding upon and shall inure to the benefit of the County, its successors and assigns, all Participants and Beneficiaries, their heirs and legal representatives.
- E. As used in the Plan, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others unless the context clearly indicates otherwise.
- F. Any notice or other communications required or permitted under the Plan shall be in writing and, if directed to Trustee, shall be sent to:

San Bernardino County Department of Human Resources
Employee Benefits and Services Division
157 West 5th Street, First Floor

If directed to an Eligible Employee, Participant, Dependent or Beneficiary, at his/her last known address as it appears in the County's, the SBPEA's, or the SEBA's records, whichever is applicable.

- G. Trustee shall have the right to contract for administration, legal, accounting and investment services with regard to the operation of the Plan.
- H. This Plan is intended to qualify as an eligible "voluntary employees' beneficiary association" (VEBA) as defined under Section 501(c)(9) of the Internal Revenue Code of 1986 and any successor sections, and shall be interpreted and administered in a manner consistent with Section 501(c)(9).
- I. Upon written request, a copy of this Plan shall be made available to each Eligible Employee, Participant, or Beneficiary.

ARTICLE XI - PROVISION OF PROTECTED HEALTH INFORMATION TO EMPLOYER

- A. Permitted Disclosures of Protected Health Information (PHI)

Unless otherwise permitted by law, and subject to obtaining written certification pursuant to certification by Employer, on and after April 14, 2003, the San Bernardino County Retirement Medical Trust Plan may disclose PHI (as defined in 45 CFR, 164.501) to the Employer solely for the purpose of enabling the Employer to perform administrative functions related to the treatment, payment and health care operations of such Plan as defined in 45 CFR, 164.501.

In no event shall the Employer be permitted to use or disclose PHI in a manner that is inconsistent with 45 CFR, 164.504(f).

- B. Conditions of Disclosure

The Employer agrees that with respect to any PHI disclosed to it by the San Bernardino County Retirement Medical Trust Plan that it shall:

1. Not use or further disclose the PHI other than as permitted or required by the Plan or as required by law.
2. Ensure that any agents, including a subcontractor, to whom it provides PHI received from the Plan, agree to the same restrictions and conditions that apply to the Employer with respect to PHI.
3. Not use or disclose the PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the

Employer.

4. Report to the Plan any use or disclosure of the information that is inconsistent with the uses or disclosures provided for of which it becomes aware.
5. Make available PHI in accordance with 45 CFR, 164.524.
6. Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR, 164.526.
7. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR, 164.528.
8. Make its internal practices, books, and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of Health and Human Services for purposes of determining compliance by the Plan with subpart E of 45 CFR, 164.
9. If feasible, return or destroy all PHI received from the Plan that the Employer still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
10. Ensure that the adequate separation between the Plan and Employer, required in 45 CFR, 504(f)(2)(iii), is satisfied.

C. Separation between Plan and Employer

To satisfy the requirements of Conditions of Disclosure above, the following conditions shall apply:

1. Only the following employees, or classes of employees, or other persons under control of the Employer, shall be given access to the PHI to be disclosed: Plan Administrator; those Human Resources Department employees acting as claims administrator with the responsibility for Plan enrollment, claim processing, investigating questions and recommending decisions, investigating appeals and recommending decisions to the Plan Administrator; Plan management and quality assessment activities; and finance department employees.
2. The access to and use of PHI by the individuals described above shall be restricted to the Plan administration functions that the Employer performs for the Plan.

3. An individual described above who fails to comply with the provision of the Plan Document relating to the use and disclosure of PHI shall be subject to disciplinary action under the Employer's established policies and procedures.

D. Certification by Employer

The Plan shall disclose PHI to the Employer only upon the receipt of a certification by the Employer that the Plan Document has been amended to incorporate the provisions of 45 CFR, 164.504(f)(2)(ii), and that the Employer agrees to the conditions of disclosure set forth in this document. The Plan shall not disclose and may not permit a health insurance issuer or HMO to disclose PHI to the Employer as otherwise permitted herein unless the statement required by 45 CFR, 164.520(b)(1)(iii)(C) is included in the appropriate notice.

IN WITNESS WHEREOF, the County of San Bernardino, the San Bernardino Public Employees Association, and the San Bernardino County Safety Employees' Benefit Association have executed this Plan Amendment as of January 27, 2004.

COUNTY OF SAN BERNARDINO

Dennis Hansberger, Chair, Board of Supervisors

Dated _____

SAN BERNARDINO PUBLIC EMPLOYEES ASSOCIATION

By _____
Chris Prato, General Manager

Dated _____

SAN BERNARDINO COUNTY SAFETY EMPLOYEES' BENEFIT ASSOCIATION

By _____
Jim Erwin, President

Dated _____